



CRP Nos.4579 to 4584 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2023

CORAM

THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRP.Nos.4579 to 4584 of 2017

CRP.No.4579 of 2017;-

M/s.Jayam Housing Infrastructure Pvt., Ltd.,
Rep. by its Managing Director
V.Anbalagan,
No.14/1, Bharathi Nagar,
Panjalai Amman Koil Street,
Arumbakkam, Chennai – 106.

..Petitioner

Vs.

Dr.E.Meera Bai

..Respondent

Prayer: Civil Revision Petition filed under Section 25 of Tamil Nadu Buildings (Lease and Rent) Control Act, 1960, to set aside the order dated 12.04.2017 and made in M.P.No.90 of 2017 in RCA.No.67 of 2017 on the file of IX Judge, Small Causes Court (Rent Control Appellate Authority), Chennai.

(In all petitions)

For Petitioner : Mr.T.Murugamanickam, Senior Counsel
for Mr.A.C.Kumaragurubaran

For Respondent : Mr.S.Ganesh



CRP Nos.4579 to 4584 of 2017

COMMON ORDER

WEB COPY

The CRP.No.4579 to 4584 of 2017 have been filed as against the fair and decretal order dated 12.04.2017 made in RCA.Nos.67 and 68 of 2017 and M.P.Nos.90 and 28 of 2017 in RCA.No.67 of 2017 and M.P.Nos.91 and 29 of 2017 in RCA.No.68 of 2017 on the file of IX Judge, Small Causes Court (Rent Control Appellate Authority), Chennai.

2.The revision petitioner is a tenant and the respondent is the landlord. The respondent filed a petition for eviction on the ground of willful default in R.C.O.P.No.795 of 2013. The petitioner has also filed a petition for eviction on the ground of owners occupation in R.C.O.P.No.393 of 2014.

3.For the sake of convenience, the parties are referred to as their ranking before the trial Court.

3.The case of the petitioner is that the petitioner is the owner of the petition premises and the respondent is the tenant. The petition premises was rented out in favour of the respondent for a monthly rent of Rs.32,000/- for residential purpose. However, the respondent is using the ground floor for commercial purpose and using the first floor for residential purpose. The



monthly rent shall be payable on or before 5th day of every succeeding calender month. The respondent has been irregular in paying the monthly rent and as such, the petitioner caused legal notice to the respondent for irregular payment of rent.

4.While being so, the respondent committed default in payment of rent from August 2012 to February 2013. The petitioner is also filed another petition for eviction on the ground of owners occupation. He was married and gave birth to two daughters, the elder daughter is yet to be married and the younger daughter had already got married. After marriage, the younger daughter and her husband are living separately in a rented house at Kotturpuram, Chennai. Therefore, the petitioner intends to accommodate the younger daughter in the ground floor of the petition premises. The petitioner's daughters do not have any own house in the City of Chennai. Thus, the petition premises is bonafidely required for his family members namely his daughters.

5.Resisting the same, the respondent filed a counter affidavit and stated that the monthly rent was fixed at Rs.15,000/- for ground floor and Rs.14,000/- for first floor of the petition premises in which she already paid an advance amount of Rs.2,90,000/- to the original owner M.K.Ethirajulu. Thereafter, a



sum of Rs.2,00,000/- was also paid as an additional advance to the petitioner's father M.K.Ethirajulu on 21.11.2009. Therefore, totally a sum of Rs.4,19,000/- was paid as an advance and the same is lying with the said M.K.Ethirajulu. Subsequently, the monthly rent was enhanced to Rs.32,000/- and thereafter, it was enhanced to a sum of Rs.35,000/- per month. The petitioner also used to receive the said amount by cheque. Therefore, there is no willful default committed by the respondent. The respondent was detained in pursuant to the police case and therefore, she has been restricting his movements but also incurred a heavy loss in her business. Therefore, she could not pay the rent from August 2012 to February 2013. It is the case of bonafide reasons and the petitioner never committed any willful default in payment of rent.

6.While pending the eviction petition, the respondent filed a petition under Section 11(3) of Tamil Nadu Buildings (Lease and Rent) Control Act, 1960, claiming arrears of rent.

7.On the side of the respondent no one was examined and EXs.P1 to 5 were marked and on the side of the respondent no one was examined and EXs.R1 to 6 were marked.



8.On perusal of oral and documentary evidence, the learned Rent Control

Appellate Authority ordered for eviction on the ground of willful default.

9.In so far as, the eviction petition on the ground of owners occupation is concerned, the respondent had contended that the petition premises has not been partitioned either by the said M.K.Ethirajulu or by the petitioner, after his demise. Therefore, the claim of owners occupation is not sustainable. In the said petition, the petitioner had examined RW1 and no document was marked as exhibits and the respondent had examined PW1 and Exs.P1 to 5 were marked.

10.On perusal of evidence, the learned Rent Controller allowed the petition and ordered for eviction on the ground of owners occupation. Aggrieved by the same, the respondent preferred an appeal before the learned Rent Control Appellate Authority in RCA.No.67 of 2017 along with an application for stay in M.P.No.28 of 2017 in RCA.No.67 of 2017. He filed another application for stay in M.P.No.29 of 2017 in RCA.No.68 of 2017. Initially, the learned Rent Control Appellate Authority granted an order of stay. Pending the appeal, again the petitioner filed applications in both RCAs under Section 11(3) of Tamil Nadu Buildings (Lease and Rent) Control Act, 1960, seeking permission to pay a sum of Rs.5,72,000/- as rental arrears for granting order of interim stay.



WEB COPY

11. Resisting the same, the respondent filed a counter affidavit along with calculation of memo. According to her, there is a rental arrears to the tune of Rs.6,14,000/-. However, the learned Rent Controller directed the petitioner to deposit the arrears of rent to the tune of Rs.5,72,000/- on or before 24.03.2017, by an order dated 07.03.2017. However, the petitioner failed to comply with the said order and as such, the M.P.No.90 of 2017 in RCA.No.67 of 2017 and M.P.91 of 2017 in RCA.No.68 of 2017 were closed. In pursuant to the said order, the stay granted in M.P.No.28 of 2017 in RCA.No.67 of 2017 and M.P.No.29 of 2017 in RCA.No.68 of 2017 were also dismissed and the proceedings were also closed. In pursuant to the said order, both RCAs were dismissed. Aggrieved by the same, these present civil revision petitions.

12. Mr. T. Murugamanickam, the learned Senior Counsel appearing for the petitioner would submit that as on today, the petitioner is paying the rent regularly without fail. He also produced the copy of the Demand Draft. Therefore, there is absolutely no arrears so far. Once the respondent agreed to receive the rent, though there was irregular in payment of monthly rent, it cannot be construed as willful default.



13. In this regard, in order to substantiate the said contention, the learned counsel for the petitioner relied upon the judgment of this Court reported in **2002 2 Law Weekly 642** in the case of ***M/s. Fast Cool Services by Partners I. Radhamohan and Others Vs. P. Shanthakumari***, wherein, this Court held that whether receipt of cost under protest will bar landlord from questioning the correctness of the order before the Appellate Authority. Allowing the party to challenge the order would amount to nullifying the effect of acceptance of costs. In such circumstances, the party cannot approbate the reprobate. His own act would estop him. At the most, it can be said that the petitioner had two options, one to accept the costs and to treat the order as correct and the other not to accept the costs and to challenge the same in revision. He elected to accept the costs, he exercised his choice in accepting the order as correct. Lodging the protest in such circumstances is meaningless.

14. He would further submit that even before filing the civil revision petitions before this Court, the petitioner had paid the entire arrears of rent and the same was duly received by the respondent herein. Subsequently, the petitioner continues to pay the monthly rent without any default. In so far as, the order of eviction on the ground of owners occupation is concerned, after the death of the original landlord M.K. Ethirajulu, the petitioner has not partitioned



the property along with the other legal heirs when it being so, the petitioner cannot maintain the eviction petition on the ground of owners occupation without adding the co-owners of the petition premises.

15.Per contra, the learned counsel for the respondent would submit that the petitioner has been irregular in payment of monthly rent to the petition premises. Even according to the petitioner, he was in arrears of payment of rent and as such, he himself filed an application under Section 11(3) of Tamil Nadu Buildings (Lease and Rent) Control Act, 1960, before the learned Rent Control Appellate Authority. Thereafter, the learned Rent Control Appellate Authority allowed the same and directed the petitioner to pay the arrears of rent to the tune of Rs.5,72,000/- on or before 24.03.2017. Even then the petitioner did not comply with the said order and as such, as per the provision under Section 11(3) of Tamil Nadu Buildings (Lease and Rent) Control Act, 1960.

16.In so far as, the proceedings were stopped and the learned Rent Control Appellate Authority rightly dismissed the appeal. Thereafter, irregular payment of rents on non-compliance of the order passed under Section 11(3) of Tamil Nadu Buildings (Lease and Rent) Control Act, 1960, would amount to clear willful default and as such, the order passed by the learned Rent Control



Appellate Authority does not require any interference by this Court.

WEB COPY

17.In so far as, the eviction order on the ground of owners occupation is concerned, admittedly, the petitioner had two daughters, the elder daughter was unmarried one and the younger daughter was a married and she is residing with her husband separately. She does not own any house in the City of Chennai. Therefore, the petitioner's requirement is bonafide one and both the Courts below were rightly allowed the petition for eviction on the ground of owners occupation.

18.Heard Mr.T.Murugamanickam, the learned Senior Counsel for the petitioner and Mr.S.Ganesh, the learned counsel for the respondent and perused the materials available on record.

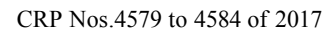
19.Admittedly, the petitioner is a tenant and the respondent is the landlord of the petition premises for a monthly rent of Rs.35,000/-. The respondent filed an application on the ground of willful default and also on the ground of owners occupation. Admittedly, the petitioner was in arrears of rent and only after filing the petition under Section 11(3) of Tamil Nadu Buildings (Lease and Rent) Control Act, 1960, the petitioner had paid arrears of rent.



Pending the appeal, the petitioner filed a petition under Section 11(3) of Tamil Nadu Buildings (Lease and Rent) Control Act, 1960, seeking permission to deposit the arrears of rent to the tune of Rs.5,72,000/-. It was allowed and even then the petitioner failed to pay the arrears of rent. Therefore, the entire proceedings in the appeal was rightly stopped by the learned Rent Control Appellate Authority, who ordered for eviction.

20.It is a settled law that though the petitioner paid his entire arrears of rental amount and continues to pay the monthly rent, the earlier non-payment of rent and irregular payment of rent would amount to willful default. Admittedly, the petitioner paid the arrears of rent only on 14.09.2017, the learned Rent Controller ordered in the application filed under Section 11(3) of Tamil Nadu Buildings (Lease and Rent) Control Act, 1960, on 12.04.2017. The petitioner had paid the arrears of rent only after filing this civil revision petition before this Court. Therefore, the judgment cited by the learned Senior Counsel is not applicable in the case on hand.

21.In so far as, the eviction on the ground of owners occupation is concerned, admittedly, the petitioner had two daughters, in which the elder daughter is unmarried and the younger daughter got married and residing in a



P1 to 5 and on perusal of EX.P5 revealed about the rental agreement between the younger daughter of the petitioner and the landlord. Therefore, the requirement of the petitioner is bonafide one and both the Courts below rightly ordered eviction on the ground of owners occupation.

22. In view of the above, this Court finds no infirmity or illegality in the orders passed by the Courts below. Accordingly, these civil revision petitions stand dismissed. Further, the learned Senior Counsel appearing for the petitioner would submit that the petitioner seeks six months time to vacate and hand over the vacant possession of the petition premises to the respondent. Considering the above submission, the petitioner shall vacate the petition premises and hand over the vacant possession of the same, on or before 01.08.2023. There shall be no order as to costs.

01.02.2023

Speaking/Non-speaking order
Index : Yes/No
ata

G.K.ILANTHIRAIYAN.J,

ata



CRP Nos.4579 to 4584 of 2017

To

The IX Judge, Small Causes Court
(Rent Control Appellate Authority),
Chennai.

CRP.Nos.4579 to 4584 of 2017

01.02.2023